

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

In re:

PROGRESSIVE PLUMBING, INC.

PROGRESSIVE SERVICES, LLC and  
GRACIOUS LIVING DESIGN  
CENTER, INC.,

Debtors.

Case No.: 6:15-bk-07275-KSJ  
Chapter 11

Jointly Administered with  
Case No. 6:15-bk-07276-KSJ  
Case No. 6:15-bk-07277-KSJ

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PROGRESSIVE PLUMBING, INC.,

Plaintiff,

v.

KAST CONSTRUCTION III, LLC, a Florida  
limited liability company, and MICHAEL  
MACDONALD, an individual,

Defendants.

Adversary Proceeding No.  
No. 6:16-ap-00078-KSJ

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**SECOND SUPPLEMENT TO PLAINTIFF'S MOTION TO COMPEL COMPLIANCE  
WITH THIS COURT'S DISCOVERY RELATED ORDERS (DOC. 36)**

Progressive Plumbing, Inc. (“Progressive”), by and through its undersigned counsel, and pursuant to Fed. R. Civ. P. 37(b)(2)(A), made applicable to this adversary proceeding by Fed. R. Bankr. P. 7037, hereby files this Second Supplement to Plaintiff’s Motion to Compel Compliance with this Court’s Discovery Related Orders (the “Second Supplement”) (Doc. 36), and in support thereof states as follows:

## **Background**

1. Progressive served its initial Request for Production (the “RFP”) to Defendant on or around *August 31, 2017*.

2. On November 15, 2017, this Court issued its Order Granting Motion to Compel and ordered Defendant to respond to Progressive’s RFP and to produce all relevant documents to Progressive by December 8, 2017 (the “First Order”) (Doc. 33).

3. After a long series of continuing discovery failures and related motions, on April 4, 2018, this Court issued its Order Granting Plaintiff’s Motion to Compel Compliance with this Court’s Discovery Related Orders with Incorporated Memorandum of Law (the “Second Order”)(Doc. 49).

4. The Second Order awarded sanctions in response to Kast’s repeated failures to produce discovery documents and gave Defendant until April 20, 2018, to produce all remaining responsive documents to Progressive and indicated that all objections, including objections based on privilege, had been waived by Defendant.

5. The Second Order stated that Defendant’s failure to timely produce the remaining discovery would result in the “striking of Defendant’s Answer and Affirmative Defenses and the entry of a final default judgment against Defendant.”

6. On April 9, 2018, Defendant’s counsel produced four (4) additional folders of documents related to this matter (the “Fourth Supplemental Production”). While Defendant’s Fourth Supplemental Production did satisfy many of the individual document requests, it still, inexplicably, did not satisfy all outstanding document requests in compliance with this Court’s Order.

7. More specifically, Defendant has failed to produce all responsive documents pursuant to two (2) separate and important requests contained in the RFP. Each of those two (2) requests is laid out in more detail below.

#### **The Specific Requests at Issue**

8. Request #23 of the RFP reads as follows:

All documents related to change orders, signed or unsigned, for the STP Contract and related to Progressive, including any communications, internal or with Progressive, regarding any such change orders.

Defendant's response to request #23 reads as follows:

The documents which are responsive to this request were produced on November 22, 2017 by shared data file.

9. Defendant has failed to produce *any documents* at all related to the changes orders of the STP Contract (as defined in the RFP) , including the change orders themselves, despite its statement that it produced such documents in its initial production.

10. Defendant's failure to produce documents pursuant to Request #23 appears to be solely attributable to Defendant's inaction. According to emails produced by the Defendant, Defendant's counsel asked Defendant to gather and produce the missing documents, which included documents related to the STP Contract, as Progressive was entitled to receive and inspect those documents. Krista Phillips, an employee of Defendant, informed other employees of Defendant on September 29, 2017, that documents related to the STP project were needed. Further, Defendant's counsel informed Defendant that Progressive was requesting these items and Defendant failed to take any action. True and correct copies of emails exhibiting these discussions are attached hereto as **Composite Exhibit "1."**

11. In fact, the only documents produced by Defendant related at all to the STP Contract are emails about needing to produce such documents.

12. The STP Contract is an integral part of this action. Count IV of the Complaint is expressly for breach of the STP Contract and alleges that Defendant owes Progressive for unpaid amounts related to the contract and to certain change orders.

13. The STP Contract, attached to the Complaint as Exhibit N, was for a total price of \$1,328,250.00 and was executed July 8, 2013. It is a separate contract from the SNP Contract which is the subject of Counts III, V, and VI. It is part of a major project where Defendant was the general contractor.

14. Defendant is also attempting to withhold sums due to Progressive under that contract against sums due on the separate SNP Contract.

15. In support of Count IV, Request 23 of the RFP asks for all changes orders and internal communications regarding those change orders, which are important to proving the amounts owed by Defendant.

16. Defendant's failure to produce a single change order or related communication from the STP Contract is a continued violation of the First Order and the Second Order (collectively, the "Orders").

17. Other than the emails where counsel for Defendant discusses the need for Defendant to find these documents, Defendant's production, including its Fourth Supplemental Production, did not produce any documents responsive to this request. As a result, Defendant's document production pursuant to Request #23 remains deficient and fails to comply with the Orders.

18. Request #7 of the RFP reads as follows:

All documents, minutes, or other records relating to the March 5, 2015, job coordination meeting related to the project.

Defendant's latest response to request #7 simply read "None." Defendant, in other digital folders, did produce some meeting minutes for other job coordination meetings on the project. Minutes of such meetings were kept by Defendant.

19. These minutes are particularly important because they reflect a meeting which occurred around the time that Defendant was imploring Progressive to stay on the job while at the same time planning how to terminate Progressive without payment.

20. Defendant's Fourth Supplemental Production produced meeting minutes for various subcontractor meetings. Among the meeting minutes produced were minutes from meetings taking place on December 1, 2014, February 9, 2015, April 6, 2015, July 23, 2015, November 13, 2015, January 8, 2016, March 10, 2016, and several other dates later in 2016. However, Defendant did not produce the minutes requested for this specific meeting. As a result, Defendant's document production pursuant to request #7 remains deficient and fails to comply with the Orders.

#### **Memorandum of Law and Relief Requested**

21. Defendant has failed to comply with the Orders by failing to provide all documents responsive to Progressive's RFP. Specifically, Defendant has failed to produce documents pursuant to Requests 7 and 23.

22. Pursuant to Fed. R. Civ. P. 37(b)(2)(A) this Court has the power to issue broad sanctions against Defendant for its repeated and intentional failures to comply this Court's discovery related orders, including the Orders. Generally, in a situation such as the instant matter, this Court may issue one or more of the sanctions contained in Fed. R. Civ. P. 37(b)(2)(A).

23. Moreover, in the instant matter, the Second Order specifically contained the sanctions that would be imposed if Defendant failed to comply with the Second Order within the

time allowed for such compliance. Therefore, Defendant's failure to comply with the Second Order necessitates the striking of Defendant's Answer and Affirmative Defenses and the entry of a final default judgment against Defendant.

WHEREFORE, Progressive respectfully requests that this Court enter an Order that states as follows:

- (a) Striking Defendant's Answer and Affirmative Defenses in full; and
- (b) Entering a final default judgment against Defendant; and
- (c) Declaring that Plaintiff is entitled to reasonable attorneys' fees and costs incurred related to the preparation and litigation of all motions related to enforcement of the Second Order; and
- (d) Granting any such other relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Michael A. Nardella  
Michael A. Nardella, Esq.  
Florida Bar No. 051265  
Nardella & Nardella, PLLC  
250 East Colonial Drive, Suite 102  
Orlando, FL 32801  
Telephone: (407) 966-2680  
Email: [mnardella@nardellalaw.com](mailto:mnardella@nardellalaw.com)  
[afebres@nardellalaw.com](mailto:afebres@nardellalaw.com)

*Attorney for Debtor/Plaintiff*

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served electronically on the 26th day of April, 2018, to:

Bart A. Houston, Esq.  
Houston Law Firm  
1401 E. Broward Blvd.  
Fort Lauderdale, Florida 33301  
[bhouston@thlglaw.com](mailto:bhouston@thlglaw.com); [dschena@thlglaw.com](mailto:dschena@thlglaw.com)  
*Counsel for Defendants*

Justin M. Luna, Esq.  
Latham, Shuker, Eden & Beaudine, LLP  
111 N. Magnolia Avenue, #1400  
P.O. Box 3353 (32802-3353)  
Orlando, Florida 32801  
[jluna@lseblaw.com](mailto:jluna@lseblaw.com); [bknotice@lseblaw.com](mailto:bknotice@lseblaw.com); [wrivera@lseblaw.com](mailto:wrivera@lseblaw.com); [mfranklin@lseblaw.com](mailto:mfranklin@lseblaw.com);  
[crivello@lseblaw.com](mailto:crivello@lseblaw.com)  
*Counsel for Defendants*

/s/ Michael A. Nardella  
Michael A. Nardella, Esq.

# **Composite Exhibit 1**

**From:** Krista Phillips  
**To:** Bart A. Houston  
**CC:** Roger Whitman, Charles Dill, Michael MacDonald, Mike Utley External, Ben Albertson  
**Subject:** RE: Discovery in Progressive vs. Kast  
**Date:** Tuesday, March 6, 2018 1:03:59 PM

I do not have access to the text messages. I am not sure if Kast could request them from our carrier or not – I will ask HR.

As far as #1, I guess I can put all files that we have scanned, hard copies, notes, etc. into this folder and let them filter through it. It will just be a copy of everything that has already been separated in the other folders but I will do that this afternoon and have it all completed by tomorrow. Hopefully IT will have everything compiled and uploaded and I can send you an updated link.

After reviewing the folders, do you see anything else that we need to address besides what we have already discussed?

Thanks



Krista Phillips, Project Assistant  
Phone: 561-891-1181  
Fax: 561-689-2911  
Email: [kphillips@kastbuild.com](mailto:kphillips@kastbuild.com)

701 Northpoint Parkway, Suite 400  
West Palm Beach, FL 33407

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**CERTIFIED**  
**2017**

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4950 Donald Ross Road  
Palm Beach Gardens, FL 33418  
[www.kastbuild.com](http://www.kastbuild.com)



**From:** Bart A. Houston [mailto:[bhouston@thlglaw.com](mailto:bhouston@thlglaw.com)]  
**Sent:** Tuesday, March 06, 2018 12:54 PM  
**To:** Krista Phillips <[kphillips@kastbuild.com](mailto:kphillips@kastbuild.com)>  
**Cc:** Roger Whitman <[swhitman@kastbuild.com](mailto:swhitman@kastbuild.com)>; Charles Dill <[cdill@kastbuild.com](mailto:cdill@kastbuild.com)>; Michael MacDonald <[mmacdonald@kastbuild.com](mailto:mmacdonald@kastbuild.com)>; Mike Utley External <[mike.utley@meupc.com](mailto:mike.utley@meupc.com)>; Ben Albertson <[balbertson@kastbuild.com](mailto:balbertson@kastbuild.com)>  
**Subject:** RE: Discovery in Progressive vs. Kast

Krista,

Not that the RFP also requires txt messages. Do you have access to those items.??

Also, Request #1 is "the file" (of all documents) relating to the Water Club Project. Do we have such a "file". I would presume it is a conglomeration of many files that are electronic & hard copy. Although very broad, it is within the bounds of discovery and they have a right to view such items. Do these "files" exist in one place.?? File room, storage room, etc. ???

**Bart A. Houston, Esq.**  
Cell: 954-609-1075  
[bhouston@thlglaw.com](mailto:bhouston@thlglaw.com)

**From:** Krista Phillips [mailto:[kphillips@kastbuild.com](mailto:kphillips@kastbuild.com)]  
**Sent:** Monday, March 05, 2018 1:48 PM  
**To:** Bart A. Houston  
**Cc:** Roger Whitman; Charles Dill; Michael MacDonald; Mike Utley External; Ben Albertson  
**Subject:** RE: Discovery in Progressive vs. Kast

I have just spoke with our IT department. They are going to download all messages from Mike MacDonald, Ben Albertson and myself that have the following terms

Pinnacle  
Pinnacle Plumbing  
Progressive  
Progressive Plumbing  
Plumbing

He is going to attempt to have this completed by Wednesday afternoon.

Note: We have had a recent email failure so he is working to restore files right now and will try to work this task in over the next two days.

BOOSTER SYSTEM: I have no idea about this and hopefully I can get some answers on this by Wednesday when our IT department has the emails.



Krista Phillips, Project Assistant  
Phone: 561-891-1181  
Fax: 561-689-2911  
Email: [kphillips@kastbuild.com](mailto:kphillips@kastbuild.com)

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4950 Donald Ross Road  
Palm Beach Gardens, FL 33418  
[www.kastbuild.com](http://www.kastbuild.com)



**From:** Bart A. Houston [mailto:[bhouston@thlglaw.com](mailto:bhouston@thlglaw.com)]  
**Sent:** Monday, March 05, 2018 1:31 PM  
**To:** Krista Phillips <[kphillips@kastbuild.com](mailto:kphillips@kastbuild.com)>  
**Cc:** Roger Whitman <[swhitman@kastbuild.com](mailto:swhitman@kastbuild.com)>; Charles Dill <[cdill@kastbuild.com](mailto:cdill@kastbuild.com)>; Michael MacDonald <[mmacdonald@kastbuild.com](mailto:mmacdonald@kastbuild.com)>; Mike Utley External <[mike.utley@meupc.com](mailto:mike.utley@meupc.com)>; Ben Albertson <[balbertson@kastbuild.com](mailto:balbertson@kastbuild.com)>  
**Subject:** RE: Discovery in Progressive vs. Kast

Krista,

Thanks again.

Do you know whether Mike and Ben actually uploaded emails.?? Do you have access to their emails such that you could use the key words "progressive" and "pinnacle" to search and locate emails. Unfortunately, this is the exercise we must go through to comply with our discovery obligations. Mike & Ben are employee/agents of Kast and thus we (as Kast) must insure complete response to the documents requested.

I will review all and get back to you ASAP. Do you feel as if the items designated in Mr. Graham's email have either been added or are not in our possession.??

**Bart A. Houston, Esq.**

Cell : 954.609.1075  
[bhouston@thlglaw.com](mailto:bhouston@thlglaw.com)

**From:** Krista Phillips [mailto:[kphillips@kastbuild.com](mailto:kphillips@kastbuild.com)]  
**Sent:** Monday, March 05, 2018 12:53 PM  
**To:** Bart A. Houston  
**Cc:** Roger Whitman; Charles Dill; Michael MacDonald; Mike Utley External; Ben Albertson  
**Subject:** RE: Discovery in Progressive vs. Kast

<https://kastbuild.sharefile.com/d-s5d2df77e59943e29>

Good Afternoon Mr. Houston,

I have updated a few items that I thought may help. As far as emails are concerned, Mike MacDonald and Ben Albertson were the ones that communicated and met with Progressive and Pinnacle. I asked them back in October to upload any documents that were requested. I hope that once you review the new link that you can let us know what else we need to upload. Below are the items that I updated since the link that I sent over this morning.

I have added additional info to the following numbers

4. They actually should be looking for emails from/to John Grimaldi who was the owner's rep. (nothing added – just a note)
6. Owner Change Orders were added per their request
9. Added one file that was a scan for Mike Utley from when this first began explaining cost, etc.
16. Added a copy of the executive approval for Pinnacle as well as their scope of work
19. Added a PDF from our accounting system with Draws and Payments received
22. Added contract status doc from Textura (payment system) showing the 20 ACH payments as well as any change orders that were written to Pinnacle Plumbing. As well as matching proof of payments from Timberline (Sage).

## YOUR MISSION | KAST CONSTRUCTION

Krista Phillips, Project Assistant

Phone: 561-891-1181  
Fax: 561-689-2911  
Email: [kphillips@kastbuild.com](mailto:kphillips@kastbuild.com)

701 Northpoint Parkway, Suite 400  
West Palm Beach, FL 33407



**From:** Bart A. Houston [mailto:[bhouston@thlglaw.com](mailto:bhouston@thlglaw.com)]

**Sent:** Monday, March 05, 2018 10:24 AM

**To:** Krista Phillips <[kphillips@kastbuild.com](mailto:kphillips@kastbuild.com)>

**Cc:** Roger Whitman <[swhitman@kastbuild.com](mailto:swhitman@kastbuild.com)>; Charles Dill <[scdill@kastbuild.com](mailto:scdill@kastbuild.com)>; Michael MacDonald <[smmacdonald@kastbuild.com](mailto:smmacdonald@kastbuild.com)>; Mike Utley External <[mike.utley@mepc.com](mailto:mike.utley@mepc.com)>

**Subject:** RE: Discovery in Progressive vs. Kast

Reviewing now.

**Bart A. Houston**

Cell: 954.609.1075  
[bhouston@thlglaw.com](mailto:bhouston@thlglaw.com)

**From:** Krista Phillips [mailto:[kphillips@kastbuild.com](mailto:kphillips@kastbuild.com)]

**Sent:** Monday, March 5, 2018 10:00 AM

**To:** Bart A. Houston

**Cc:** Roger Whitman; Charles Dill; Michael MacDonald; Mike Utley External

**Subject:** RE: Discovery in Progressive vs. Kast

<https://kastbuild.sharefile.com/d-sa6bc53d4c584dd5a>

See above the updated link that was created back in October 2017. I feel that they may not have had the current link because after reviewing the folders there are items that Mr. Graham mention not having that are in the folders. If you could review these items compared to your list and let us know if there is anything else that may not be included then we will search for more documentation.

Thanks

## YOUR MISSION | KAST CONSTRUCTION

Krista Phillips, Project Assistant

Phone: 561-891-1181  
Fax: 561-689-2911  
Email: [kphillips@kastbuild.com](mailto:kphillips@kastbuild.com)

701 Northpoint Parkway, Suite 400  
West Palm Beach, FL 33407



**From:** Bart A. Houston [mailto:[bhouston@thlglaw.com](mailto:bhouston@thlglaw.com)]

**Sent:** Friday, March 02, 2018 3:30 PM

**To:** Krista Phillips <[kphillips@kastbuild.com](mailto:kphillips@kastbuild.com)>

**Cc:** Roger Whitman <[swhitman@kastbuild.com](mailto:swhitman@kastbuild.com)>; Charles Dill <[scdill@kastbuild.com](mailto:scdill@kastbuild.com)>; Michael MacDonald <[smmacdonald@kastbuild.com](mailto:smmacdonald@kastbuild.com)>; Mike Utley External <[mike.utley@mepc.com](mailto:mike.utley@mepc.com)>

**Subject:** RE: Discovery in Progressive vs. Kast

Krista

Two weeks ago we had a pre-trial status conference in the Progressive v. Kast matter pending in the Middle District Bankruptcy case.

At that time, the Plaintiffs raised issues concerning the incompleteness of our document production. The judge ordered them to put in writing the concerns about the production. They sent this to me yesterday and I wanted to forward to you & then discuss by Monday or Tuesday. Please review and let me know your availability. Thx.

Bart,

We wanted to get a comprehensive list of missing documents to you in this matter. We have gone through your response to Progressive's First Request for Production and the documents produced pursuant to same. The below list details the

documents that are missing from Kast's production. The numbers below correspond to the similarly numbered request contained in Progressive's First Request for Production.

1. Your production contained no documents pursuant to this request. It is apparent that Kast's entire file on this matter was not produced due to the multitude of missing documents in this matter. For example, we are missing all internal Kast communications, all information relating to payment to Kast on the project, and many change orders issued on the project. Therefore, those documents, among many others, were requested and are missing from Kast's production.

2. We received two (2) internal Kast emails pursuant to this request. Given the amount of electronic communications that occur on construction projects of this size, it is inconceivable that these are the only relevant internal communications from Kast. As a result, there are clearly missing internal Kast communications related to Progressive and its work on the project. Therefore, those documents were requested and are missing from Kast's production.

3. Kast simply produced the notice of default it sent to Progressive on or around January 30, 2015. There are no internal Kast communications and no other documentation related to the decision to send that letter or the circumstances underlying Kast's decision to terminate Progressive from the project. Therefore, those documents were requested and are missing from Kast's production.

4. Kast failed to produce a single communication between Kast and Bob Vail, who was the owner's representative on the project. It strains belief to think that Kast and the owner of the project did not exchange a single email related to Progressive, its alleged default on the project, and Kast's decision to send a notice of default to Progressive. Therefore, those documents were requested and are missing from Kast's production.

6. Kast failed to produce a copy of its contract with Domani Development for the project. It is not possible that Kast performed work on a multi-million dollar construction project without a contract with the owner of that project. Additionally, please provide all relevant change orders entered into between Kast and Domani Development for the project and detail sheets on same. These documents were requested and are missing from Kast's production.

7. Kast did not produce the requested meeting minutes from a meeting it held on March 5, 2015. Kast did produce meeting minutes from other job coordination meetings related to the project. Therefore, it is clear that Kast keeps minutes of these job coordination meetings. Therefore, those documents were requested and are missing from Kast's production.

8. Kast provided a spreadsheet showing the change orders apparently entered into on the project. It shows a total of fifty-two (52) change orders for the project. However, Kast only produced copies of change orders numbered 1, 10, 11, 12, 13, 14, 16, 17, 19, and 22. Further, the change orders produced are missing the accompanying detail sheets. As a result, we are missing the remaining change orders that were not produced and the detail sheets for all fifty-two (52) change orders entered into between Pinnacle Plumbing and Kast. These documents were requested and are missing from Kast's production.

9. Kast did not produce any documentation related to bids received by replacement contractors for Progressive's scope of work on the project. It seems that Kast either did not solicit bids and simply chose Pinnacle Plumbing to replace Progressive or it did not produce the requested documentation. Therefore, please produce all relevant bid solicitation documentation or let us know that Kast did not solicit bids for this scope of work.

10. Kast simply produced the termination letter it sent to Progressive on or around March 13, 2015. However, Kast failed to produce any documents related to the making of that decision or any internal Kast communications related to that decision. Those documents were requested and are missing from Kast's production.

11 and 12. Kast failed to produce any documentation related to the booster system. Kast claims it has no such documents in its possession but it had previously attached a photo of the booster system to a document filed in this matter. As a result, Kast possesses at least some information on the booster system and/or its whereabouts. All such documents were requested and are missing from Kast's production.

16. Kast produced a few documents related to Pinnacle Plumbing's scope of work on the project. However, Kast produced only two (2) email communications between Kast and Pinnacle Plumbing related to Pinnacle Plumbing's work on the project. Again, it strains belief that there are only two (2) email communications based on the amount of change orders entered into between Kast and Pinnacle Plumbing and Pinnacle Plumbing's scope of work on the project. Therefore, any such documents were requested and are missing from Kast's production.

17. This is a similar request to request #16 and the same reasoning stated above for request #16 applies here.

19. Kast failed to produce a single document related to the payment it received for its work on the project. It is clear that Kast received payment for the project or else it would not have completed its work on the project. As a result, there must be cancelled checks, bank statements, direct deposit confirmations or other documents evidencing payment to Kast. However, Kast failed to produce any such documents. Those documents were requested and are missing from Kast's production.

21. Kast failed to produce a single document concerning communications with Progressive that are related to making payments to Progressive for its work on the project. Progressive has informed us that there were certainly communications from Michael MacDonald to Progressive related to this subject. As a result, documents responsive to this request certainly exist. Those documents were requested and are missing from Kast's production.

22. Kast produced the twenty (20) pay apps submitted to Kast by Pinnacle Plumbing. However, Kast failed to produce any payment information related to those pay apps. The request encompassed all actual evidence of payment made from Kast to Pinnacle Plumbing. That includes cancelled checks, direct deposit or wire transfer confirmations or any other evidence of payment being made from Kast to Pinnacle Plumbing. All such documents were requested and are missing from Kast's production.

23. Kast failed to produce any documents pursuant to this request. It is clear that internal Kast communications and documents related to change orders entered into under the STP contract must exist. A project of this size does not get completed without the exchange of a single email among Kast employees or a single change order being entered into under the contract. Therefore, those documents were requested and are missing from Kast's production.

Finally, please provide us with details on your and/or Kast's process in searching for responsive documents. That information would include Kast's document retention policy, the type of searches run on Kast's system in searching for responsive documents, the identity of the person searching for responsive documents, and the keywords or phrases used to run searches on Kast's system.

Please let us know if you have any questions.

Thank you,

Christian Graham

Bart A. Houston, Esq.  
Cell: 954.609.1075  
[bhouston@thiglaw.com](mailto:bhouston@thiglaw.com)

From: Krista Phillips [mailto:[krista.phillips@kastbuild.com](mailto:krista.phillips@kastbuild.com)]  
Sent: Friday, December 15, 2017 12:01 PM  
To: Bart A. Houston; Charles Dill; Michael MacDonald  
Cc: Roger Whitman  
Subject: RE: Discovery in Progressive vs. Kast

Good Morning,

I have added all the files that we have collected to date. I feel that we have put together all the documents that pertain to Progressive. I have copied Charles Dill and Mike MacDonald on this email which were the PM's on the job. You may ask them to confirm that they have nothing else to add.



Krista Phillips, Project Assistant

Phone: 561-689-2910

ICard#: 561-508-5173

Fax: 561-508-5175

Email: [krista.phillips@kastbuild.com](mailto:krista.phillips@kastbuild.com)

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From: Bart A. Houston [mailto:[bhouston@thiglaw.com](mailto:bhouston@thiglaw.com)]

Sent: Thursday, December 14, 2017 3:35 PM

To: Krista Phillips [mailto:[krista.phillips@kastbuild.com](mailto:krista.phillips@kastbuild.com)]

Cc: Roger Whitman [mailto:[roger.whitman@kastbuild.com](mailto:roger.whitman@kastbuild.com)]

Subject: RE: Discovery in Progressive vs. Kast

Krista,

The link is operable and I was able to download all documents. Thank you.

By the by, do we feel certain that we have gathered all responsive documents ?? Do you need any clarification or explanations from me on the request ?? I just want to be sure we are done so you don't have to re-visit and we don't have to file another supplemental response at this time. Thx.

Bart A. Houston, Esq.  
Cell : 954.609.1075  
[bhouston@thiglaw.com](mailto:bhouston@thiglaw.com)

From: Krista Phillips <[kphillips@kastbuild.com](mailto:kphillips@kastbuild.com)>  
Sent: Thursday, December 14, 2017 9:46 AM  
To: Bart A. Houston  
Cc: Roger Whitman  
Subject: RE: Discovery in Progressive vs. Kast

<https://kastbuild.sharefile.com/d-127a6c15937e5471a8>

Please try this link. Our IT department worked on the files so hopefully they corrected the problem. Let me know if it does not work and we will try sending it a different way.

Thanks,



Krista Phillips, Project Assistant  
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Cell 561-891-1181  
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[www.kastbuild.com](http://www.kastbuild.com)



From: Bart A. Houston <[bhouston@thiglaw.com](mailto:bhouston@thiglaw.com)>  
Sent: Wednesday, December 13, 2017 6:48 PM  
To: Krista Phillips <[kphillips@kastbuild.com](mailto:kphillips@kastbuild.com)>  
Cc: Roger Whitman <[swhitman@kastbuild.com](mailto:swhitman@kastbuild.com)>  
Subject: RE: Discovery in Progressive vs. Kast

Krista,

There is a file naming error that will not allow me to download the files. I was able to (and have) reviewed all files – but cannot download. Can you please review and determine how to share with me so that I may make a supplemental production. Thx.

Bart A. Houston, Esq.  
Cell : 954.609.1075  
[bhouston@thiglaw.com](mailto:bhouston@thiglaw.com)

From: Roger Whitman <[swhitman@kastbuild.com](mailto:swhitman@kastbuild.com)>  
Sent: Monday, November 27, 2017 9:00 AM  
To: Bart A. Houston  
Subject: Fwd: Discovery in Progressive vs. Kast

Sent from my iPhone

Begin forwarded message:

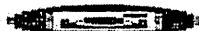
From: Krista Phillips <[kphillips@kastbuild.com](mailto:kphillips@kastbuild.com)>  
Date: November 27, 2017 at 8:34:37 AM EST  
To: Roger Whitman <[swhitman@kastbuild.com](mailto:swhitman@kastbuild.com)>  
Subject: FW: Discovery in Progressive vs. Kast

Good Morning,

I am not sure if I am supposed to forward any information to anyone without your knowledge so I am attaching the link that has been updated with all files so you can forward to Bart or give me permission to do so and I will.

<https://kastbuild.sharefile.com/d-90d8e293a4db40h0h>

Thanks,



Krista Phillips, Project Assistant  
Phone 561-689-2910  
Cell 561-891-1181  
Email [kphillips@kastbuild.com](mailto:kphillips@kastbuild.com)

Main Office  
701 Northpoint Parkway, Suite 400  
West Palm Beach, FL 33407

PM Office  
13469 Pasteur Blvd  
Palm Beach Gardens, FL 33418  
[www.kastbuild.com](http://www.kastbuild.com)



**From:** Bart A. Houston [mailto:[bhouston@thiglaw.com](mailto:bhouston@thiglaw.com)]  
**Sent:** Wednesday, November 22, 2017 1:01 PM  
**To:** Krista Phillips <[skohillips@kastbuild.com](mailto:skohillips@kastbuild.com)>  
**Subject:** FW: Discovery in Progressive vs. Kast

Krista,

Can't seem to access the link for the additional documents. I need to download again. The

**Bart A. Houston, Esq.**  
Cell: 954.609.1075  
[bhouston@thiglaw.com](mailto:bhouston@thiglaw.com)

**From:** Roger Whitman [mailto:[rwhitman@kastbuild.com](mailto:rwhitman@kastbuild.com)]  
**Sent:** Thursday, October 26, 2017 9:03 AM  
**To:** Bart A. Houston  
**Subject:** FW: Discovery in Progressive vs. Kast



**Roger Whitman, Chief Financial Officer**

Phone: 561-402-8763  
Cell: 561-236-2363  
Fax: 561-689-1193  
Email: [rwhitman@kastbuild.com](mailto:rwhitman@kastbuild.com)

701 Northpoint Parkway, Suite 400  
West Palm Beach, FL 33407

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**From:** Krista Phillips  
**Sent:** Thursday, October 26, 2017 9:02 AM  
**To:** Roger Whitman <[rwhitman@kastbuild.com](mailto:rwhitman@kastbuild.com)>; Lisa Fields <[lfields@kastbuild.com](mailto:lfields@kastbuild.com)>  
**Subject:** RE: Discovery in Progressive vs. Kast

[https://kastbuild.sharefile.com/d\\_s144rc083-2047649](https://kastbuild.sharefile.com/d_s144rc083-2047649)

This is a link to the file I created for just the files that were uploaded after 10/10/17

Thanks  
Krista

**From:** Roger Whitman  
**Sent:** Wednesday, October 25, 2017 4:41 PM  
**To:** Krista Phillips <[skohillips@kastbuild.com](mailto:skohillips@kastbuild.com)>; Lisa Fields <[lfields@kastbuild.com](mailto:lfields@kastbuild.com)>  
**Subject:** FW: Discovery in Progressive vs. Kast

Can you send me a link for just the stuff that was loaned after 10/10/17?



**Roger Whitman, Chief Financial Officer**

Phone: 561-402-8763  
Cell: 561-236-2363  
Fax: 561-689-1193  
Email: [rwhitman@kastbuild.com](mailto:rwhitman@kastbuild.com)

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West Palm Beach, FL 33407

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**From:** Bart A. Houston [mailto:[bhouston@thiglaw.com](mailto:bhouston@thiglaw.com)]  
**Sent:** Wednesday, October 25, 2017 4:39 PM  
**To:** Roger Whitman <[rwhitman@kastbuild.com](mailto:rwhitman@kastbuild.com)>  
**Subject:** RE: Discovery in Progressive vs. Kast

Do we have any further documents ...???

**Bart A. Houston, Esq.**  
Cell: 954.609.1075  
[bhouston@thiglaw.com](mailto:bhouston@thiglaw.com)

**From:** Roger Whitman [mailto:[rwhitman@kastbuild.com](mailto:rwhitman@kastbuild.com)]  
**Sent:** Tuesday, October 10, 2017 5:47 PM  
**To:** Bart A. Houston  
**Subject:** FW: Discovery in Progressive vs. Kast

See link below for most of the info



**Roger Whitman, Chief Financial Officer**

Phone: 561-402-8763  
Cell: 561-236-2363  
Fax: 561-689-1193  
Email: [rwhitman@kastbuild.com](mailto:rwhitman@kastbuild.com)

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West Palm Beach, FL 33407

[www.kastbuild.com](http://www.kastbuild.com)



From: Krista Phillips  
Sent: Tuesday, October 10, 2017 4:00 PM  
To: Roger Whitman [rwhitman@kastbuild.com](mailto:rwhitman@kastbuild.com)  
Cc: Charles Dill [cdill@kastbuild.com](mailto:cdill@kastbuild.com)  
Subject: RE: Discovery in Progressive vs. Kast  
  
<https://kastbuild.sharefile.com/d-2ffed00c-26419cb>

The above link works fine. I just emailed this to myself and it only allows you to access these files. You just copy and paste that into the email to the outside person.

From: Roger Whitman  
Sent: Tuesday, October 10, 2017 3:57 PM  
To: Krista Phillips [kphillips@kastbuild.com](mailto:kphillips@kastbuild.com)  
Cc: Charles Dill [cdill@kastbuild.com](mailto:cdill@kastbuild.com)  
Subject: RE: Discovery in Progressive vs. Kast

Krista, I need a link I can send to an outside person that only gives them these documents do I need IT for this?



Roger Whitman, Chief Financial Officer

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Cell 561-236-2363  
Fax 561-689-1193  
Email [rwhitman@kastbuild.com](mailto:rwhitman@kastbuild.com)

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West Palm Beach, FL 33407  
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From: Krista Phillips  
Sent: Tuesday, October 10, 2017 3:55 PM  
To: Roger Whitman [rwhitman@kastbuild.com](mailto:rwhitman@kastbuild.com)  
Cc: Charles Dill [cdill@kastbuild.com](mailto:cdill@kastbuild.com)  
Subject: RE: Discovery in Progressive vs. Kast

<https://kastbuild.sharefile.com/r-rc309403fa74639b>

Here is the actually link I just gave you the file location. Sorry for the confusion

From: Roger Whitman  
Sent: Tuesday, October 10, 2017 3:53 PM  
To: Krista Phillips [kphillips@kastbuild.com](mailto:kphillips@kastbuild.com)  
Cc: Charles Dill [cdill@kastbuild.com](mailto:cdill@kastbuild.com)  
Subject: RE: Discovery in Progressive vs. Kast

Link isn't working



Roger Whitman, Chief Financial Officer

Phone 561-402-8763  
Cell 561-236-2363  
Fax 561-689-1193  
Email [rwhitman@kastbuild.com](mailto:rwhitman@kastbuild.com)

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West Palm Beach, FL 33407  
[www.kastbuild.com](http://www.kastbuild.com)



From: Krista Phillips  
Sent: Tuesday, October 10, 2017 3:44 PM  
To: Roger Whitman [rwhitman@kastbuild.com](mailto:rwhitman@kastbuild.com)  
Cc: Charles Dill [cdill@kastbuild.com](mailto:cdill@kastbuild.com)  
Subject: RE: Discovery in Progressive vs. Kast

[https://kastbuild.sharefile.com/Water\\_Club\\_T3/700\\_Staff/PP Case](https://kastbuild.sharefile.com/Water_Club_T3/700_Staff/PP Case)

Have moved all the documents to this folder. I am not sure if anyone has anything else to add.

Sorry it took so long but the Internet here kept going in and out.

Thanks  
Krista

From: Roger Whitman  
Sent: Tuesday, October 10, 2017 2:15 PM  
To: Krista Phillips [kphillips@kastbuild.com](mailto:kphillips@kastbuild.com)  
Cc: Charles Dill [cdill@kastbuild.com](mailto:cdill@kastbuild.com)  
Subject: RE: Discovery in Progressive vs. Kast

Please move whatever you have and send me the location, as we get more info we will have to segregate it from what gets loaded now.



Roger Whitman, Chief Financial Officer

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Cell 561-236-2363  
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West Palm Beach, FL 33407  
[www.kastbuild.com](http://www.kastbuild.com)



**From:** Krista Phillips  
**Sent:** Tuesday, October 10, 2017 2:07 PM  
**To:** Roger Whitman [swhitman@kastbuild.com](mailto:swhitman@kastbuild.com)  
**Cc:** Charles Dill [cdill@kastbuild.com](mailto:cdill@kastbuild.com)  
**Subject:** RE: Discovery in Progressive vs. Kast

Nate has already created a Share File under Water Club Tower 3. I asked everyone to inform me when they had uploaded all of their files and I would move it to the Share File. If Dropbox is easier, I can do that as well. Just let me know what you need me to do. I think that Ben Albertson (which was the APM at the time and handled the MEP's) was putting his emails in the folders on 9/29. I am not sure if Mike had more info to add because I never heard back from him. If they did not have anything else to add then it should be complete except for the accounting parts.

Just let me know and I will get everything moved over and then maybe you or Lisa can insert any accounting files requested or if it is easier you can drop them all in the folder that is set up on the O drive.

I will do whatever you ask me to do.

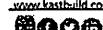
Thanks  
Krista

**From:** Roger Whitman  
**Sent:** Tuesday, October 10, 2017 2:01 PM  
**To:** Krista Phillips [swhitman@kastbuild.com](mailto:swhitman@kastbuild.com)  
**Cc:** Charles Dill [cdill@kastbuild.com](mailto:cdill@kastbuild.com)  
**Subject:** RE: Discovery in Progressive vs. Kast

I need to get this to the attorney outside the office, can we do a drop box or sharefile.



Roger Whitman, Chief Financial Officer  
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701 Northpoint Parkway, Suite 400  
West Palm Beach, FL 33407  
[www.kastbuild.com](http://www.kastbuild.com)



**From:** Krista Phillips  
**Sent:** Tuesday, October 10, 2017 1:57 PM  
**To:** Roger Whitman [swhitman@kastbuild.com](mailto:swhitman@kastbuild.com)  
**Cc:** Charles Dill [cdill@kastbuild.com](mailto:cdill@kastbuild.com)  
**Subject:** RE: Discovery in Progressive vs. Kast

Good Afternoon,

I have completed all that I can complete on my own. Accounting has not put anything in the files for payment evidence. I talked with Lisa on 9/29/17 about this but I don't see where she has uploaded anything. Other than that we have uploaded all electronic files and other loose documents that I found.

Let me know if there is anything else I can do to help.

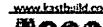
Thanks  
Krista

**From:** Roger Whitman  
**Sent:** Tuesday, October 10, 2017 1:25 PM  
**To:** Krista Phillips [swhitman@kastbuild.com](mailto:swhitman@kastbuild.com)  
**Subject:** FW: Discovery in Progressive vs. Kast

See below, how much do we have complete?



Roger Whitman, Chief Financial Officer  
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West Palm Beach, FL 33407  
[www.kastbuild.com](http://www.kastbuild.com)



**From:** Bart A. Houston [bhouston@thlglaw.com](mailto:bhouston@thlglaw.com)  
**Sent:** Tuesday, October 10, 2017 1:24 PM  
**To:** Roger Whitman [swhitman@kastbuild.com](mailto:swhitman@kastbuild.com)  
**Cc:** Debbie Schena [dschena@thlglaw.com](mailto:dschena@thlglaw.com)  
**Subject:** RE: Discovery in Progressive vs. Kast

No problem. Sorry I missed that one. Can we do it on a rolling basis (i.e., send me what you have when you get it). -

Bart A. Houston, Esq.  
Cell: 954.603.1075  
[bhouston@thlglaw.com](mailto:bhouston@thlglaw.com)

**From:** Roger Whitman [swhitman@kastbuild.com](mailto:swhitman@kastbuild.com)  
**Sent:** Tuesday, October 10, 2017 1:17 PM  
**To:** Bart A. Houston  
**Cc:** Debbie Schena  
**Subject:** RE: Discovery in Progressive vs. Kast

When you sent this I responded saying we need at least 30 days



Roger Whitman, Chief Financial Officer  
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**From:** Bart A. Houston [<mailto:bhouston@thglaw.com>]  
**Sent:** Tuesday, October 10, 2017 12:51 PM  
**To:** Roger Whitman [[rwhitman@kastbuild.com](mailto:rwhitman@kastbuild.com)]  
**Cc:** Debbie Schema [[dschema@thglaw.com](mailto:dschema@thglaw.com)]  
**Subject:** RE: Discovery in Progressive vs. Kast

RW...

Have you reviewed ?? Any questions or concerns? What is ETA for documents ??

**Bart A. Houston, Esq.**  
Cell : 954.609.1075  
[bhouston@thglaw.com](mailto:bhouston@thglaw.com)

**From:** Bart A. Houston  
**Sent:** Wednesday, September 27, 2017 5:40 PM  
**To:** Roger Whitman' [[rwhitman@kastbuild.com](mailto:rwhitman@kastbuild.com)]  
**Cc:** Debbie Schema  
**Subject:** Discovery in Progressive vs. Kast

Roger,

Attached is the document request from Progressive Plumbing. We have produced most if not all of this – but that was informal production and we will have to re-produce in this formal discovery request. Let me know how long it will take to produce and if I can assist.

**Bart A. Houston**  
The Houston Firm | 11401 East Broward Boulevard | Suite 201 | Fort Lauderdale, FL 33301  
Main: 954.900.2615 | Cell: 954.609.1075 | Fax: 954.839.9068  
Primary Email: [bhouston@thglaw.com](mailto:bhouston@thglaw.com)  
Secondary Email: [dschema@thglaw.com](mailto:dschema@thglaw.com)

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**From:** Krista Phillips  
**To:** Lisa Fields; Lenette Carter  
**Cc:** Roger Whitman; Richard MacDonald; Charles Dill  
**Subject:** Accounting Items Needed for Progressive Claim  
**Date:** Friday, September 29, 2017 10:44:41 AM  
**Attachments:** [DE 30 First Request for Production of Documents - due 10.15.17.pdf](#)

---

Good Morning Lisa,

This is the document from the attorney that I talked with you about this morning. I need the items accounting concerning payments etc. I think they start at item number 19 on page 10. There are also info for another project from Kast from 2013 mentioned in item number 13 on page 8. I do not have any of that info for the STP Contract for Water Club in St Pete. Just let me know. If you need any more info from me to get this stuff uploaded.

I created a file on the O: Drive under Water Club called Progressive Claim. I have asked Nate to set up a file on the Share Drive but I have not heard back from him so for now, I guess we can put everything in there.



**Krista Phillips, Project Assistant**

Phone 561-689-2910

Jobsite 561-508-5173

Fax 561-508-5175

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West Palm Beach, FL 33407

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